PUBLIC PROSECUTOR v. TECK GUAN CO. LTD.

[A.Cr.J. (Lee Hun Hoe J.) March 6, 1970]

[Kota Kinabalu — Criminal Appeal No. 18 of 1969]

Criminal Law and Procedure — Mens rea — Liability of company for acts of its servants — Sabah Forest Enactment, 1968, s. 30(g).

Forestry — Logs — Possession — Knowledge — Whether company liable for servant's acts — Sabah Forest Enactment, 1968, s. 30(g).

In this case the respondents were charged with an offence for possession of 13 logs bearing the property hammer marks of the North Borneo Timber Berhad Group, without lawful authority or legal right, under section 30(g) of the Forest Enactment. They were acquitted as the learned magistrate held that knowledge was an ingredient of the offence and mere possession was not sufficient to convict. The Public Prosecutor appealed.

Held, dismissing the appeal: (1) as the word "knowingly" is used in section 30(g) of the Forest Enactment, the learned magistrate was right in taking the view that the prosecution must prove knowledge in respect of the offence of possession;

(2) in the circumstances of the case it could not be inferred that the company had knowledge in the matter.

Cases referred to:-

(1) *R.* v. *Kung Sie Chew* [1958] S.C.R. 55.

(2) *Reynold* v. *G.H. Austin & Sons,* [1951] 2 K.B. 135 and 143.

(3) *Newman* v. *Jones* (1886) 17 Q.B.D. 132.

MAGISTRATE'S CRIMINAL APPEAL.

Stephen Foo for the appellant.

W. K. Loo for the respondent.

Lee Hun Hoe J.: The respondent, Teck Guan Co. Ltd. was charged before the learned magistrate, Tawau, with an offence for possession of 13 logs bearing the property hammer marks of the North Borneo Timber Berhad Group, without lawful authority or legal right, under section 30(g) of the Forest Enactment, 1968. It was acquitted. The Public Prosecutor appealed against the acquittal.

The facts may be summarised. Tham Chiok Kok (P.W. 1) was an employee of Teck Guan Co. Ltd., Tawau and was authorised to buy logs from small holders. On March 3, 1969 he agreed to buy certain logs from a Malay. On March 23, 1969 somehow 19 logs arrived and were found in the log pond. On the same day these logs were scraped, graded, allotted shipping numbers and towed to a ship called 'Mono 2' for export. As a result of a surprise check on board by Masiron Rundi (P.W. 5), a forest officer loading was stopped and the 19 logs were seized. Thirteen of these logs were eventually identified as bearing the property hammer marks of the North Borneo Timber Berhad Group.

There was evidence to show that the logs had been scraped and that attempt had been made to remove the marks. All the employees said that they saw the 19 logs in the log pond but none seemed to know how the logs got into the pond. Each employee tried to exonerate himself from blame.

Both Ng Ching Kwok (D.W. 1) the secretary and Fong Teck Guan (D.W. 2) the managing director of Teck Guan Co. Ltd. gave evidence. They confirmed that Tham Chiok Kok (P.W. 1) was authorised to buy small quantities of logs from shareholders. They stated that he had been specifically instructed not to purchase logs of doubtful origin. They denied that they had knowledge of the logs in the log pond and that they had bought the logs. They could not explain how the logs were found in their pond. There is no doubt that Tham Chiok Kok was either negligent or reckless in buying logs. He has since been dismissed.

The learned magistrate held that knowledge was an ingredient of the offence and that mere possession was not sufficient to convict. He also considered that the explanation given by the defence was reasonable and probable. He found the accused not guilty.

The Public Prosecutor appealed on two grounds, namely,

(1) The learned magistrate erred in law in holding that *mens rea* was an essential ingredient of an offence under the second part of section 30(g) of the Forest Enactment, 1968 by reading the word 'knowingly' into it.

(2) Even if *mens rea* is an essential ingredient of an offence under the second part of section 30(g) of the Forest Enactment, 1968, the learned magistrate erred in holding that there were insufficient circumstances from which he could infer *mens rea* beyond reasonable doubt when the circumstances proved were such that *mens rea* could be inferred beyond reasonable doubt.

Although a considerable number of authorities were cited, I do not consider it necessary to go into all of them for the purpose of this case. The first ground concerns a matter of construction of section 30(g) of the Forest Enactment, 1968. The relevant provisions read: —

"30. Any person who, without lawful authority of legal right —

.....

(g) knowingly receives or is in possession of any forest produce which bears any property mark or in respect of which a forest offence has been committed or upon which the royalty or other payment due in respect thereof has not been paid or made;

.....

shall be guilty of an offence and liable to imprisonment for two years and a fine of five thousand dollars."

The word "of" before the words "legal right" would seem to be an error. It should read "or" if it is to have any sense. With the exception of paragraph (g) all other paragraphs of section 30 do not have the word "knowingly". It is argued that paragraph (g) has two limbs. Under the first limb, that is in the case of "receiving" *mens rea* is an ingredient, whereas under the second limb, that is the case of "in possession" *men rea* is not an ingredient.

It has been generally interpreted that the insertion of the word "knowingly" in a statute prevents the crime from being one of absolute prohibition. It has also been said that the effect of the word "knowingly" in a statute means the necessity of proving knowledge. *Glanville Williams* in the Criminal Law, 22nd Edition, page 161 puts it this way: —

"If 'knowingly' is not included in the statute, the party will be deemed to act recklessly unless he mistakes a relevant fact. Simple ignorance is not enough to negative the crime. But if the word is inserted, simple ignorance becomes a defence, and it is only knowledge (or its equivalent, wilful blindness) that convicts."

In my view the word "knowingly" ought not to be read into a statutory offence unless it is clear that the legislature intended it to be so. It is desirable in all cases to adhere to the words of the statute, giving to them that sense which is their natural import in the order in which they are placed. The meaning and intention of a statute must be collected from the plain and unambiguous expressions used therein. Every statute is to be expounded according to its expressed or manifest intention.

Reference was made to the Sarawak case of *Regina* v. *Kung Sie Chew*[1] where Lascelles, J. held that *mens rea* was not an element in the offences constituted by section 126(1)(a) of the Customs Ordinance, 1952 and section 9(1)(a) of the Dangerous Drugs Ordinance, 1952 and that liability was an absolute one.

It is of interest to note that section 126(1) of the Customs Ordinance, 1952 contains seven paragraphs of which three have the word "knowingly". Paragraph (d) reads:

"knowingly harbours, keeps, conceals or is in possession of, or permits, suffers, causes or procures to be harboured, kept or concealed, any uncustomed or prohibited goods."

This paragraph is of particular interest because of similarity of construction as argument has been advanced concerning the grammatical construction of section 30(g) of the Forest Enactment, 1968.

I respectfully agree with what Lascelles J. said at page 58 that is: —

"Looking at section 126 of the Customs Ordinance it is clear that *mens rea* is not expressly excluded. But when one bears in mind the use of the word 'knowingly' in some of the offences and not in others in the same section then in my opinion *mens rea* is excluded by necessary implication in those offences when 'knowingly' is omitted. I am strengthened in this opinion by consideration of the objects of this Ordinance and even more so by the objects of the Dangerous Drugs Ordinance."

The implication is clear that where the word "knowingly" is inserted in those paragraphs in the same section then *mens rea* is an ingredient. I doubt if it is possible to accept the proposition that in the above-mentioned paragraph (d) of section 126(1) of the Customs Ordinance, 1952 *mens rea* is an ingredient in respect of harbouring, keeping, concealing and so on except in the case of "possession".

I come to section 30(g) of the Forest Enactment. It is an accepted principle of construction that when a word is expressly included in one part of an Enactment and excluded in another then the omission is said to be deliberate. If the legislature did not intend to import knowledge into the second limb of paragraph (g) the easiest thing to do was to split the paragraph into two separate paragraphs. In my view the proper construction is that when the word "knowingly" is inserted in the same paragraph the legislature intended to cover both limbs. Accordingly I hold that the learned magistrate was right to take the view that the prosecution must prove knowledge in respect of the offence of possession.

In the case of penal statutes the rule of strict construction is usually more rigorously followed. Nevertheless a more rational regard should be given to the aim and object of the legislature. But the paramount object, whether in construing penal or other statutes, is to ascertain the legislative intent. The effect of the rule of strict construction is that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, then the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself.

The second ground of appeal has no substance. It was argued that from the evidence *mens rea* could be inferred with reasonable doubt. I do not agree that is so on the facts of this case. Where an inference is to be drawn then such inference must be such as to lead to one and only one irresistible conclusion. But where there is more than one inference which can reasonably be drawn from a particular set of facts then the inference most favourable to the accused should be adopted. There is an important link missing in the chain of evidence adduced by the prosecution. Although there is evidence that Tham Chiok Kok (P.W. 1) agreed to buy logs from a Malay, there is no evidence as to how the 19 logs came into the pond. As the Malay was not called it is not known whether in actual fact he delivered the logs. There is also the possibility that Tham Chiok Kok (P.W. 1) was making money on the side line because of his position. There should be stricter control by the company. There is also another possibility that responsible officers of the company knew what was going on but prefered to keep a blind eye so as to remain ignorant of such transactions, as the company profits from the export of the logs. It is true that the presence of the logs in the log pond and that the processes of scraping and grading by servants of the company raise very strong suspicion of unlawful dealing. It is probable someone knew of the delivery of the logs but preferred to keep quiet about it either to protect himself or another from blame. It is of course lawful to buy logs but once a person buys stolen logs it becomes unlawful. He opens himself to a charge of receiving stolen property. On the other hand if the unlawful act is the result of an action entirely unknown to the company by a person not the company's servant then the company should not be held liable even though *mens rea* is not a constituent of the offence. See *Reynolds* v. *G. H. Austin & Son.*[2]

A corporation will be placed in a serious position if it is to be held liable in every case through the act of its servant. Generally, a master is not responsible for the act of his servant when that servant acts without his knowledge and outside the scope of his authority. Thus the committee of a club could not be properly convicted of selling liquor without a proper licence where the sale had been by the steward contrary to the express orders of the committee, and without their knowledge and assent. See *Newman* v. *Jones.*[3]

For the reasons given I would dismiss the appeal against the order of acquittal.

Appeal dismissed.